

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA – ORLANDO DIVISION**

**CASE NO. 6:17-bk-06025-KSJ
CHAPTER 7**

IN RE:

**ELIEL SANTOS and SARAH
SANTOS,**

Debtor(s)

**CREDITOR'S MOTION FOR
RELIEF FROM THE AUTOMATIC STAY**

Subject Property: 345 PRINCETON AVE
RAHWAY, NEW JERSEY 07065-

**NOTICE OF OPPORTUNITY TO
OBJECT AND REQUEST FOR HEARING**

Pursuant to Local Rule 2002-4, the Court will consider the relief requested in this paper without further notice or hearing unless a party in interest files a response within 21 days from the date set forth on the attached proof of service, plus an additional three days for service if any party was served by U.S. Mail.

If you object to the relief requested in this paper, you must file a response with the Clerk of the Court at George C. Young Federal Courthouse, 400 West Washington Street, Suite 5100, Orlando, Florida 32801 and serve a copy on the movant's attorney, Taji Foreman, Esq., at Kahane & Associates, P.A., 8201 Peters Road, Ste 3000, Plantation, FL 33324, and any other appropriate persons within the time allowed. If you file and serve a response within the time permitted, the Court will either schedule and notify you of a hearing or consider the response and grant or deny the relief requested without a hearing.

If you do not file a response within the time permitted, the Court will consider that you do not oppose the relief requested in the paper, will proceed to consider the paper without further notice or hearing, and may grant the relief requested.

Creditor, SELECT PORTFOLIO SERVICING INC., AS LOAN SERVICER FOR U.S. BANK N.A., AS TRUSTEE, ON BEHALF OF THE HOLDERS, OF THE J.P. MORGAN MORTGAGE ACQUISITION TRUST 2006-WMC4 ASSET BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-WMC4, ("Creditor"), by and through undersigned counsel and pursuant to 11 U.S.C. §362(d), Fed. Rule Bankr. P. 4001 moves this Court for relief from the automatic stay to proceed *in rem*, and states:

1. The Court has jurisdiction over the subject matter herein.
2. On or about September 27, 2006, SARAH SANTOS executed and delivered a promissory note (the “Note”), and a mortgage securing payment of the Note (the “Mortgage”). Creditor is entitled to enforce the Note, a true and correct copy of which is attached hereto as Exhibit “A”.
3. The Mortgage was recorded on October 24, 2006, Instrument No. 421449 of the Public Records of UNION, County New Jersey and encumbered the property described in the Mortgage. A true and correct copy of the Mortgage is attached hereto as Exhibit “B”. The Creditor is a secured creditor through the Note and Mortgage executed on September 27, 2009 in the amount of \$319,200.00.
4. The Mortgage was subsequently assigned to U.S. Bank National Association by virtue of an assignment of mortgage (the “Assignment of Mortgage”) recorded on November 14, 2007 in the Instrument No. 126654, of the Public Records of UNION County, New Jersey. A true and correct copy of the Assignment of Mortgage is attached hereto as Exhibit “C”.
5. The loan was subsequently modified pursuant to the Loan Modification Agreement, a true and correct copy of which is attached hereto as Exhibit “D”.
6. Select Portfolio Servicing, Inc. is the servicer of the loan described in the Note and Mortgage and, as such, has the authority to initiate the instant action and any foreclosure on the Creditor’s behalf pursuant to a Power of Attorney, attached hereto as Exhibit “E”.
7. The Creditor has the right to foreclose on the subject property.
8. SARAH SANTOS (“Debtor”) is in default under the Note and Mortgage and is not adequately protecting the Creditor.
9. The Debtors, ELIEL SANTOS and SARAH SANTOS filed this voluntary Chapter 7 proceeding on September 8, 2017.

10. The Creditor holds a security interest in the subject property located at 345 PRINCETON AVENUE, RAHWAY, NEW JERSEY 07065 ("Property"), more fully described in the Mortgage attached as Exhibit "B". The legal description for the Property is as follows:

DESCRIPTION

All that certain tract, lot and parcel of land lying and being in the City of Rahway, County of Union, State of New Jersey and being more particularly described as follows:

Beginning at a point in the easterly line of Princeton Avenue (50 feet wide) therein distance 200.00 feet northerly from the corner formed by the intersection of the said line of Princeton Avenue and the northerly line of Grove Street (66 feet wide); thence

- 1) Along the said line of Princeton Avenue, North 17 degrees 32 minutes East, 50.00 feet to a point; thence
- 2) South 72 degrees 28 minutes East, 100.00 feet to a point; thence
- 3) South 17 degrees 32 minutes West, 50.00 feet to a point; thence
- 4) North 72 degrees 28 minutes West, 100.00 feet to the point and place of beginning.

The above description being in accordance with the survey prepared by BABS Engineering, PC dated September 25, 2006

FOR INFORMATION ONLY: Being known as Lot 7, Block 51 on the current Tax Maps of the City of Rahway, Union, County, New Jersey. Being commonly known as 345 Princeton Avenue, Union, New Jersey.

11. The Debtor is indebted to the Creditor in the total amount of \$520,687.51. Pursuant to the valuation, attached hereto as Exhibit "F" the property is valued at \$255,000.00.

12. The amount due to the Creditor as of September 16, 2017 is \$520,687.51. The Amount due exceeds the Property's value as stated above, so there is no equity in the Property.

13. The Creditor maintains that cause exists pursuant to 11 U.S.C. §362(d)(1) for the automatic stay to be lifted. The Creditor's security interest in the subject property is being significantly jeopardized by the Debtors' failure to make regular payments under the Note and Mortgage while Creditor is prohibited from pursuing lawful remedies to protect such interest. The default is based on the contractual default. The contractual monthly mortgage payment is \$1,497.93, which is comprised of principal and interest, as well as escrow, if applicable. The Debtor is indebted to the Creditor in the total amount of \$520,687.51.

14. Creditor further seeks relief to, at its option, offer, provide, and enter into any potential loan assistance agreement. Creditor requests that it may contact the Debtor via telephone or written correspondence to offer such an agreement.

15. Select Portfolio Servicing, Inc. is servicing the loan on behalf of the Creditor. Any payments made to the Creditor must be sent to:

Select Portfolio Servicing, Inc.
Attn: Remittance Processing
P.O. Box 65450, Salt Lake City, UT 84165-0450

16. Creditor hereby waives the requirement under §362(e) that a hearing be held within 30 days of filing the Motion for Relief from the Automatic Stay.

17. Creditor respectfully requests that the Court waive the fourteen (14) day stay of the order granting relief pursuant to Fed. Rule Bankr. P. 4001 (a)(3), so that Creditor can pursue its *in rem* remedies without further delay.

WHEREFORE, Creditor, SELECT PORTFOLIO SERVICING INC., AS LOAN SERVICER FOR U.S. BANK N.A., AS TRUSTEE, ON BEHALF OF THE HOLDERS, OF THE J.P. MORGAN MORTGAGE ACQUISITION TRUST 2006-WMC4 ASSET BACKED PASS-THROUGH CERTIFICATES, SERIES 2006-WMC4, prays that this Court issue an order terminating or modifying the stay, and that the fourteen (14) day stay of the order pursuant to Fed. Rule Bankr. P. 4001 (a)(3) be waived or, in the alternative, that the Debtor(s) be directed forthwith to make regular cash payments that would adequately protect Creditor's interest. Additionally, Creditor requests this Court award any other relief this Court deems just and proper.

DATED this 22nd day of September, 2017.

Respectfully Submitted,

Kahane & Associates, P.A.
8201 Peters Road, Suite 3000
Plantation, Florida 33324
Telephone: (954) 382-3486
Telefacsimile: (954) 382-5380

By: 

☐ Marc G. Granger, Esq., Fla. Bar No.: 146870

☐ Gregg S. Ahrens, Esq., Fla. Bar No.: 352837

☒ Taji Foreman, Esq., Fla. Bar No.: 58606

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of September, 2017, I served a copy

of the foregoing either electronically and/or via first class U.S. mail upon:

Eliel Santos
2090 Marsh Hawk Dr
Orlando, FL 32837

Sarah Santos
2090 Marsh Hawk Dr
Orlando, FL 32837

Alejandro Rivera, Esq.
Alejandro Rivera, P.A.
Attorney for Debtors
1400 W. Oak Street, F
Kissimmee, FL 34741-4000

Marie E. Henkel, Trustee
3560 South Magnolia Avenue
Orlando, FL 32806

U.S. Trustee
United States Trustee - ORL7/13
Office of the United States Trustee
George C Young Federal Building
400 West Washington Street, Suite 1100
Orlando, FL 32801

Respectfully Submitted,

Kahane & Associates, P.A.
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